

**Steven Randall Kincaid, Ph.D.****May 18, 2005**

1 (Pages 1 to 4)

<p>1 Volume 1, Pages 1-111, Exhibits 1-9</p> <p>2 IN THE UNITED STATES DISTRICT COURT</p> <p>3 FOR THE DISTRICT OF MASSACHUSETTS</p> <p>4 No. 04 CIV 11522 (WGY)</p> <p>5 ----- x</p> <p>6 STEVEN R. KINCAID x</p> <p>7 Plaintiff x</p> <p>8 v. x</p> <p>9 BANK OF AMERICA CORPORATION x</p> <p>10 Defendant x</p> <p>11 ----- x</p> <p>12</p> <p>13 DEPOSITION of STEVEN RANDALL KINCAID, Ph.D.</p> <p>14 Wednesday, May 18, 2005, 10:15 a.m. to 2:23 p.m.</p> <p>15 Offices of Edwards &amp; Angell, LLP</p> <p>16 101 Federal Street, Boston, Massachusetts</p> <p>17</p> <p>18 ----- JONATHAN H. YOUNG, RDR, CRR -----</p> <p>19 COURT REPORTER</p> <p>20 EPPLEY COURT REPORTING</p> <p>21 P. O. Box 382</p> <p>22 Hopedale, Massachusetts 01747</p> <p>23 508.478.9795 Fax 508.478.0595</p> <p>24 leppley@msn.com</p>	<p>1 May 18, 2005</p> <p>2 [Witness sworn]</p> <p>3 STEVEN RANDALL KINCAID, Sworn</p> <p>4 EXAMINATION</p> <p>5 BY MR. KANE:</p> <p>6 Q. State your name for the record, please,</p> <p>7 sir.</p> <p>8 A. Steven R. Kincaid.</p> <p>9 Q. What does the R stand for?</p> <p>10 A. Randall; R-a-n-d-a-l-l.</p> <p>11 MR. KANE: Let's mark this.</p> <p>12 [Kincaid Exhibit 1 marked for</p> <p>13 identification]</p> <p>14 Q. Mr. Kincaid, I'm handing you a marked copy</p> <p>15 of an amended notice of deposition. I've given you,</p> <p>16 actually, two copies. One is marked with the yellow</p> <p>17 sticker and the other is not. The other is for your</p> <p>18 attorney, Mr. Fine.</p> <p>19 Please take a look at Exhibit Number 1.</p> <p>20 Mr. Kincaid, I understand you may or</p> <p>21 may not have seen that document before, but it was</p> <p>22 served on you through your counsel; and I'm most</p> <p>23 interested in the second paragraph of the notice,</p> <p>24 requesting that you bring documents, videos, and</p>
<p>1 PRESENT:</p> <p>2 David J. Fine, Esq.</p> <p>3 Three Center Plaza, Suite 400</p> <p>4 Boston, Massachusetts 02108-2003</p> <p>5 617.720.2942 Fax 617.720.0987</p> <p>6 dvdfine@aol.com</p> <p>7 for the Plaintiff</p> <p>8</p> <p>9 Richard F. Kane, Esq.</p> <p>10 McGuireWoods LLP</p> <p>11 Bank of America Corporate Center</p> <p>12 100 North Tryon Street, Suite 2900</p> <p>13 Charlotte, North Carolina 28202</p> <p>14 704.373.8999 Fax 704.373.8935</p> <p>15 rkane@mcguirewoods.com</p> <p>16 for the Defendant</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>	<p>1 audio recordings in your possession which you</p> <p>2 believe support your claim.</p> <p>3 Do you have any such documents that have</p> <p>4 not been previously produced to the defendant Bank</p> <p>5 of America?</p> <p>6 A. No, I don't have any more.</p> <p>7 MR. FINE: Let me just note for the</p> <p>8 record that I've permitted the witness to answer</p> <p>9 that question; but I believe that this particular</p> <p>10 paragraph in the notice of deposition is of no legal</p> <p>11 force or effect, in that it's not a request for</p> <p>12 production in accordance with the rules.</p> <p>13 MR. KANE: All right. I disagree, but</p> <p>14 we don't need to resolve that at this point.</p> <p>15 Q. Mr. Kincaid, what is your current address?</p> <p>16 A. Eight Towne Lane, Topsfield, Massachusetts</p> <p>17 01983.</p> <p>18 Q. How long have you lived there?</p> <p>19 A. Two years.</p> <p>20 Q. What is your date of birth?</p> <p>21 A. July 19, 1953.</p> <p>22 Q. Are you married?</p> <p>23 A. No.</p> <p>24 Q. Have you been married?</p>

**EPPLEY COURT REPORTING**  
**508.478.9795**

<p style="text-align: right;">57</p> <p>1 that was on television at the time, You De Man, and 2 said what she had said on the phone, and told me I 3 had done a excellent job. 4 And she said during the telephone 5 conversation that she was going to call Sheila and 6 tell her what a great job I had done, and apparently 7 she did that. I was not involved in the 8 conversation with Sheila. 9 And Sheila, I can't recall if she 10 e-mailed me or called me directly after, saying, I 11 heard from Susan, and I heard that you had a really 12 outstanding success in your meeting with Vale. 13 Q. When was the meeting held that you're 14 referring to, that was so successful? 15 A. Sometime in the fall of 2002. I remember 16 it was on a Friday afternoon. 17 Q. How long after you had reported for work? 18 A. I'm guessing it was in October sometime. 19 Q. What was the subject matter of the meeting? 20 A. There was a difficulty in this large bank 21 tracking study that involved measurement of 22 statistical significance. 23 Because measuring statistical 24 significance involves the sample size that is</p>	<p style="text-align: right;">59</p> <p>1 part of a trend; and you can say, if it's outside 2 the band, above or below of what you would expect 3 from the continuation of the current trend, you 4 can say that is an exceptional result, you are 5 exceptionally good or exceptionally bad. 6 The advantage of this technique is that 7 it doesn't rely on the number of interviews that are 8 required to gather a survey result; it relies on the 9 number of data points in the past. 10 So, by doing that, you're able to 11 circumvent this hindrance or obstacle to 12 measuring statistical significance. 13 Q. So you're breaking it down in kind of a 14 regression analysis? 15 A. Well, what you're doing is you're looking 16 at it with a different lens. 17 Instead of using kind of an old- 18 fashioned and traditional tool -- which really 19 handcuffs you, because you can't really ever get 20 enough interviews to break out, and you can't get 21 statistical significance -- you're looking at it 22 with a different lens and saying, if we look at a 23 trend that's been established by previous data 24 points, what would constitute a meaningful</p>
<p style="text-align: right;">58</p> <p>1 in a survey, it's very difficult in big banking 2 tracking studies to ever achieve statistical 3 significance, because you really can't 4 interview that many people. 5 You would have to interview literally 6 millions of people every quarter to get enough 7 people to make it be statistically significant. 8 And the people in Vale's group were 9 struggling with how to generate action from the 10 bank's senior management when they were unable to 11 say that satisfaction had improved significantly or 12 declined significantly. 13 And this was a quandary or a problem 14 that was kind of amenable to my skills, and I came 15 up with a way to solve their problem and presented 16 it to them. 17 Q. What was your method for solving the 18 problem? 19 A. Well, the method was not to abandon the use 20 of the formal or kind of old-fashioned management of 21 statistical significance. 22 If you use a different analysis 23 technique, multiple regression, you can identify 24 the band within which a result would fall if it was</p>	<p style="text-align: right;">60</p> <p>1 departure from that trend, either higher 2 or lower. 3 Q. What about Mr. Kotopoulos? You say he also 4 praised your work; is that correct? 5 A. Yes. 6 When I finished my monograph about 7 how to redo, or a better way to do, the statistical 8 driver analysis, his specific words I believe were 9 This is a big win for the bank; and he told me 10 I had done a good job. 11 Q. And when was that? 12 A. That would have been in probably December 13 of 2002. 14 Q. And that's when you completed the 15 monograph? Is that ph? 16 A. Monograph, ph, yes. 17 The time that the monograph was 18 actually done is not clear; because there were a 19 number of drafts of it, and the substance of the 20 work was done at the end of 2002, in December. 21 For reasons unclear to me, the monograph 22 was not publicized and was not rolled out, as they 23 say, until several months into 2003. 24 Q. Do you know if the bank is still using that</p>



Steven Randall Kincaid, Ph.D.

May 18, 2005

16 (Pages 61 to 64)

<p style="text-align: right;">61</p> <p>1 monograph?</p> <p>2 A. I do not know.</p> <p>3 Q. Any other praise from Mr. Kotopoulos?</p> <p>4 A. That's all I can recall.</p> <p>5 Q. How about Sheila Burroughs?</p> <p>6 A. On I guess occasions kind of too many to</p> <p>7 mention individually, she said I was doing a good</p> <p>8 job, I had met her expectations, I was providing</p> <p>9 effective stimulation and leadership to the people</p> <p>10 in the bank, and I was being successful in</p> <p>11 bringing ideas to them that they had not</p> <p>12 had previously.</p> <p>13 Q. Was this throughout your employment that</p> <p>14 Sheila...</p> <p>15 A. I would say it was up until February or</p> <p>16 March of 2003.</p> <p>17 Q. Did something change in your relationship</p> <p>18 in February or March of 2003?</p> <p>19 A. Well, in April of 2003 she dramatically</p> <p>20 changed her relationship with me, and gave me a very</p> <p>21 negative personnel evaluation, and told me that my</p> <p>22 position was in jeopardy.</p> <p>23 Q. Did she praise your performance at any time</p> <p>24 after that April appraisal?</p>	<p style="text-align: right;">63</p> <p>1 our exceptionally successful meeting that was in</p> <p>2 October, that I mentioned earlier. He was quite</p> <p>3 impressed with my idea about using regression</p> <p>4 instead of formal significance testing.</p> <p>5 Q. Any other occasion?</p> <p>6 A. No.</p> <p>7 Q. How about Paul, whose last name you can't</p> <p>8 remember?</p> <p>9 A. Paul and I worked together on training</p> <p>10 his staff to carry out the new, different method</p> <p>11 of driver analysis I developed; and Paul said that</p> <p>12 I was welcome as a senior advanced resource on</p> <p>13 statistical analysis, because they had not had</p> <p>14 resources like that in the department</p> <p>15 previously.</p> <p>16 And he himself was highly interested in</p> <p>17 this analysis, had not had a great deal of occasion</p> <p>18 to practice it, but was very much interested in the</p> <p>19 topic, and he was glad that I was there because I</p> <p>20 was an experienced person in the area;</p> <p>21 and he had had issues with Richard</p> <p>22 McFarland, who was another advanced analyst but was</p> <p>23 not necessarily well versed in analysis of survey</p> <p>24 data.</p>
<p style="text-align: right;">62</p> <p>1 A. Yes, she did.</p> <p>2 Q. I'm sorry?</p> <p>3 A. Yes, she did.</p> <p>4 Q. On what occasions do you remember she</p> <p>5 praised you?</p> <p>6 A. On a couple of occasions in meetings we had</p> <p>7 I had ideas about how to improve different aspects</p> <p>8 of customer-satisfaction research, and she said that</p> <p>9 they were good ideas; and in weekly meetings, which</p> <p>10 we had every week, shortly after giving me a very</p> <p>11 negative review, she said that my performance had</p> <p>12 gotten better.</p> <p>13 Q. Did you say that was shortly after the</p> <p>14 negative review?</p> <p>15 A. Correct; within two to three weeks after</p> <p>16 the negative review.</p> <p>17 Q. Any other praise following that?</p> <p>18 A. No; none that I can remember at this time.</p> <p>19 Q. We're talking Sheila Burroughs.</p> <p>20 A. Right.</p> <p>21 Q. How about the individual whose nickname is</p> <p>22 Vale? What sort of praise did he direct towards</p> <p>23 you?</p> <p>24 A. Principally, I think that it was at</p>	<p style="text-align: right;">64</p> <p>1 Q. And how about Chuck?</p> <p>2 A. Chuck's area was the area where I first</p> <p>3 tested out my new method of driver analysis. He</p> <p>4 gave me a set of data that had already been gathered</p> <p>5 and asked me to try out, in terms of a dry run, my</p> <p>6 method on his data.</p> <p>7 And I did so; and the results my</p> <p>8 analysis came up with were more focused and more</p> <p>9 actionable than what he had received previously, and</p> <p>10 remedied some problems he had had in trying to</p> <p>11 communicate the results of the survey to his</p> <p>12 clients.</p> <p>13 Q. Any others who praised your performance?</p> <p>14 A. Yes. I worked a great deal with an</p> <p>15 individual named Alan Church.</p> <p>16 He worked in Vale's area, and he</p> <p>17 was in charge of working with people that helped in</p> <p>18 the real-estate area or were customer-satisfaction-</p> <p>19 advised in the real-estate area, and I helped them</p> <p>20 redo their method of driver analysis in much the</p> <p>21 same way as I helped people within CAMR, and I</p> <p>22 worked quite a bit with Alan.</p> <p>23 Q. And did he praise your work?</p> <p>24 A. Frequently. He had me speak to all</p>